

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAEL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMAÑA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF OSCAR MACHADO IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Oscar Machado, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.

2. I am a resident of Far Rockaway, New York, in Queens County.

3. I am a union member of Local 1010.

4. I currently work for Kelco Construction as a laborer. I have been working for Kelco Construction since approximately 2021.

5. As a laborer, I assist with many construction-related activities, such as pouring cement and concrete.

6. I am not required to report to 25 Newton Place, Hauppauge, New York

(“Hauppauge facility”) on any workday.

7. I rarely frequent the Hauppauge facility. I went to the Hauppauge facility only to attend social gatherings, such as parties and barbeques.

8. In the morning for work, I drive to Exit 29 off of Interstate 495 in Oakland Gardens, park on the street by approximately 5:10 a.m., and meet another employee driving a company vehicle to get a ride to the jobsite. There are approximately three (3) other employees who are picked up at this location but usually get rides in trucks different from mine depending on the location of the jobsite that day.

9. Depending on the traffic, it takes forty (40) minutes to one (1) hour to arrive at the jobsite in the morning from where I am picked up. I usually work between the hours of 7:00 a.m. and 3:00 or 3:30 p.m.

10. It takes me approximately one (1) hour to be dropped off where I was picked up in the morning after the end of the workday, depending on the traffic and the location of the jobsite.

11. I do not perform work on any vehicle related to work at the beginning or at the end of the workday for Kelco Construction, nor am I required to do so.

12. I work for Kelco Construction approximately eight (8) hours per day, five (5) times per week. I do not work on weekends or overtime hours.

13. Kelco Construction pays me at a union rate between approximately \$43.00 or \$48.00 per hour.

14. My primary language is Spanish. On January 25, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

15. This declaration was prepared by counsel for Defendants in the action based on an

interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 25, 2023



Oscar Machado